

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al.*,

Case No.: 485899V

Plaintiffs,

vs.

EXPEDITED HEARING REQUESTED

MONTGOMERY COUNTY, MARYLAND,

Defendant.

PLAINTIFFS' RENEWED MOTION FOR SUMMARY JUDGMENT

Pursuant to MD Rule 2-311, MD Rule 2-501 and MD Rule 2-602, plaintiffs respectfully renew plaintiffs' motion for summary judgment, previously filed with this Court on June 16, 2021. Pursuant to MD Code, Courts and Judicial Proceedings, § 3-409(e), plaintiffs respectfully request "a speedy hearing" on this motion and that the Court "advance it on the calendar" to be heard and decided as soon as possible. Plaintiffs hereby incorporate by reference and renew their May 19, 2022 motion for expedition as applied to the Court's consideration of this motion for summary judgment as well as consideration of defendant's pending motion to dismiss and alternative motion for summary judgment.

In support of this renewed motion for summary judgment, plaintiffs hereby incorporate by reference (1) the verified Complaint and the attachments filed with the Complaint, filed May 28, 2021, (2) the memorandum of law and motion and declarations filed in support of plaintiffs' June 16, 2022 Motion for Summary Judgment, (3) plaintiffs' memorandum filed in opposition to defendant's motion to dismiss and alternative motion for summary judgement and in support of

1 plaintiffs' motion for summary judgment, filed March 10, 2022, (4) plaintiffs' Supplemental
2 Memorandum Regarding Enactment Of Senate Bill 387 And House Bill 425 Into Law, filed April
3 14, 2022, (5) plaintiffs' Memorandum In Response To Defendant's Submission Concerning HB
4 425 and SB 387, filed May 16, 2022, and (6) any other matters of record, including proposed
5 orders, filed by plaintiffs in this case to date.

6 Summary judgment for declaratory and equitable relief is sought on Counts I, II and III of
7 the Complaint. Count I of the Verified Complaint alleges that Bill 4-21 is not a "local law" within
8 the meaning of Article XI § 3 of the Maryland Constitution. Count II alleges that Bill 4-21 violates
9 the Express Powers Act, MD Code, Local Government, §10-206, because Bill 4-21 is preempted
10 by or is inconsistent with numerous provisions of State law. Count III alleges that Bill 4-21
11 constitutes an illegal Taking under the Maryland Takings Clause, Article III, §40 of the Maryland
12 Constitution, and a deprivation of property without due process in violation of Article 24 of the
13 Maryland Declaration of Rights. Count IV alleges that Bill 4-21 is unconstitutionally vague under
14 both the Due Process Clause of the Fourteenth Amendment and Article 24 of the Maryland
15 Declaration of Rights.

16 On June 16, 2021, plaintiffs filed an emergency motion for partial summary judgment,
17 seeking declaratory and equitable relief on Counts I, II and IV of the Complaint, and a hearing on
18 that motion was scheduled for July 15, 2021. Plaintiffs at that time did not seek relief under Count
19 III of the Complaint. On July 12, 2021, in lieu of answering the Complaint, defendant removed the
20 entire case to federal district court pursuant to 28 U.S.C. § 1441. On February 7, 2022, the federal
21 district court granted plaintiffs' remand motion as to Counts I, II and III, but elected to retain
22 jurisdiction over Count IV.

23 On February 22, 2022, after remand, defendant filed a Motion to Dismiss and Alternative

1 Motion for Summary Judgment, and an Opposition to plaintiffs' motion for partial summary
2 judgment. Defendant's motions sought dismissal or summary judgment on Counts I, II and III.
3 Defendant requested declaratory relief as to all claims before this Court. On March 10, 2022,
4 plaintiffs filed their Opposition to defendant's motion and requested declaratory and equitable
5 relief as to all claims before this Court, including Count III. With this renewed motion for summary
6 judgment, plaintiff renew that request for declaratory and equitable relief on Counts I, II and III.

7 Plaintiffs' June 16, 2021 Motion for Summary Judgment only sought summary Judgment
8 on Counts I, II and IV of the Complaint. However, as noted above and explained in plaintiffs'
9 March 10, 2022, Opposition to defendant's motion to dismiss and alternative motion for summary
10 judgment, jurisdiction over Count IV of the Complaint has been retained by the federal district
11 court in the order that remanded Counts I-III back to this Court. Count IV remains before the
12 federal district court where proceedings on Count IV are being held in abeyance pending a final
13 judgment of this Court on Counts I-III of the Complaint. Count IV of the Complaint is thus no
14 longer before this Court and that part of plaintiffs' June 16, 2021 motion for summary judgment
15 solely addressing Count IV may therefore be disregarded. As also explained in plaintiffs' March
16 10, 2022 Opposition, defendant's motion for summary judgment seeks a declaration of rights on
17 Count III of the Complaint and plaintiffs are thus likewise entitled to a declaration of rights on
18 Count III on defendant's motion as a matter of law.

19 Accordingly, this renewed motion for summary judgment encompasses all Counts of the
20 Complaint that were remanded by the federal district court, including Count III of the Complaint.
21 No additional briefing is necessary or sought on this renewed motion for summary judgment, as
22 all the remanded Counts of the Complaint have already been thoroughly briefed on the cross-
23 motions for summary judgment. Plaintiffs have no objection to defendant's prior pleadings being

1 deemed filed in opposition to this renewed motion for summary judgment.

2 As detailed in plaintiffs' Opposition to defendant's motions, plaintiffs are entitled to "just
3 compensation" on the takings claim set forth in Count III. The **amount** of such just compensation
4 has yet to be briefed by the parties. Plaintiffs therefore respectfully suggest that the Court apply MD
5 Rule 2-602 and hold that there is no just reason for delay and enter final judgment granting
6 declaratory and equitable relief on Counts I and II and III. Such an order will permit an immediate
7 appeal on questions of law presented by these Counts, should any party so desire. The Court should
8 schedule further proceedings for a determination of the amount of just compensation due under
9 Count III. Defendant has not opposed that request for a Rule 2-602 determination. Plaintiffs hereby
10 incorporate by reference the proposed order submitted with its Opposition on March 10, 2022.

11 **CONCLUSION**

12 For all the foregoing reasons, this Court should grant plaintiffs' motion for summary
13 judgment for declaratory and equitable relief on Counts I, II and III of the Complaint. The Court
14 should apply MD Rule 2-602 and hold that there is no just reason for delay and enter final judgment
15 granting declaratory and equitable relief for plaintiffs on these Counts. The Court should schedule
16 further proceedings for a determination of just compensation under Count III.

17 Respectfully submitted,

18 /s/ Mark W. Pennak

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Dated: May 20, 2022

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on May 20, 2022, a copy of the foregoing Plaintiffs' Motion for Summary Judgment was served on the following counsel for defendant Montgomery County via the MDEC e-filing system:

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